

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BGH HOLDINGS, LLC et al.,

**Plaintiffs,**

V.

## DL EVANS BANK,

**Defendant.**

Case No. C18-1408RSL

**ORDER REGARDING  
PLAINTIFFS' RESPONSE  
TO ORDER TO SHOW  
CAUSE AND PLAINTIFFS'  
MOTION TO DISMISS  
DEFENDANT'S  
COUNTERCLAIMS**

This matter comes before the Court on (1) plaintiffs' response to the Court's Order to Show Cause (Dkt. # 109), and (2) plaintiffs' "FRCP 12(b)(1) Motion to Dismiss Defendant's Counterclaims and Third-Party Claims for Lack of Subject Matter Jurisdiction" (Dkt. # 132). Having reviewed the memoranda and exhibits submitted by the parties and the remainder of the record, and conducted oral argument, the Court finds as follows:

## I. BACKGROUND

On January 13, 2010, defendant DL Evans Bank (the “Bank”) obtained a default judgment against plaintiff Henry Dean in a Blaine County, Idaho court in the amount of \$1,063,503.16 (“Idaho Default Judgment”). See Dkt. # 32-1 (Ex. A). On October 4, 2010, the Bank domesticated the Idaho Default Judgment in King County Superior Court of Washington.

**ORDER REGARDING PLAINTIFFS' RESPONSE TO ORDER  
TO SHOW CAUSE AND PLAINTIFFS' MOTION TO  
DISMISS DEFENDANT'S COUNTERCLAIMS - 1**

1 See id. (Ex. B). The Bank renewed and extended the Idaho Default Judgment in the Blaine  
 2 County District Court on January 5, 2015. Id. (Ex. C). The Bank then renewed and extended the  
 3 foreign Idaho Default Judgment in King County Superior Court on January 23, 2015. Id. (Ex.  
 4 D). On August 2, 2018, the Bank sought and obtained a writ of execution in the King County  
 5 Superior Court. Dkt. # 5-1 (Ex. A). In August 2018, the King County Sheriff levied upon the  
 6 writ of execution, allegedly entering plaintiffs' residence to seize personal property including  
 7 certain stock shares and stock options, as well as personal, business, and legal records. Dkt. # 4  
 8 ("Am. Compl.") at ¶ 2.6. Plaintiffs subsequently filed this federal lawsuit against the Bank,  
 9 bringing claims under 42 U.S.C. § 1983 ("Section 1983") for violations of their Fourth  
 10 Amendment and Fourteenth Amendment rights (id. at ¶¶ 4.1–5.15), for conversion (id. at ¶¶  
 11 6.1–6.2), for unjust enrichment (id. at ¶¶ 7.1–7.2), and for declaratory and injunctive relief  
 12 regarding the right of execution under the Idaho Default Judgment (id. at ¶¶ 8.–8.2). The Bank  
 13 raised counterclaims against plaintiffs for declaratory judgment regarding the existence and  
 14 validity of the debt (Dkt. # 18 at ¶¶ 30–44), declaratory judgment regarding enforcement of the  
 15 Idaho Default Judgment in Washington (id. at ¶¶ 45–52), fraudulent transfers (id. at ¶¶ 53–77),  
 16 and injunctive relief to prevent further fraudulent transfers (id. at ¶¶ 78–82).

17 On May 23, 2019, the parties filed cross-motions for partial summary judgment. See  
 18 Dkts. # 31, 33. Upon review of the parties' cross-motions and the underlying complaint, the  
 19 Court viewed "the gravamen of plaintiffs' complaint as a challenge to the King County Superior  
 20 Court's issuance of a writ of execution on a state law judgment," and highlighted that the "Court  
 21 is precluded from reviewing that judgment and its execution" per the Rooker-Feldman doctrine.  
 22 Dkt. # 107. "Essentially, the Rooker-Feldman doctrine bars 'state-court losers complaining of  
 23 injuries caused by state-court judgments rendered before the district court proceedings  
 24 commenced' from asking district courts to review and reject those judgments." Henrichs v.  
 25 Valley View Dev., 474 F.3d 609, 613 (9th Cir. 2007) (quoting Exxon Mobil Corp. v. Saudi

26  
 27 ORDER REGARDING PLAINTIFFS' RESPONSE TO ORDER  
 28 TO SHOW CAUSE AND PLAINTIFFS' MOTION TO  
 DISMISS DEFENDANT'S COUNTERCLAIMS - 2

1     Basics Indus. Corp., 544 U.S. 280, 284 (2005)). The Court addressed each of plaintiffs' causes  
 2 of action one-by-one and ordered plaintiffs to show cause why all but one of the causes of action  
 3 should not be dismissed for lack of subject matter jurisdiction consistent with the Rooker-  
 4 Feldman doctrine. The only cause of action the Court construed as permitted under the Rooker-  
 5 Feldman doctrine was plaintiffs' Section 1983 claim under the Fourth Amendment, and only to  
 6 the extent the claim "pertains to defendant's alleged conduct during the entrance and searching  
 7 of plaintiffs' residence," in "enforcing the writ of execution." Dkt. # 107 at 4.

8         Plaintiffs have since filed their response to the Court's Order to Show Cause, Dkt. # 109,  
 9 as well as a separate motion to dismiss the Bank's counterclaims for lack of subject-matter  
 10 jurisdiction. Dkt. # 132. The Court considers plaintiffs' response and motion, respectively,  
 11 below.

## 12         **II. PLAINTIFFS' RESPONSE TO ORDER TO SHOW CAUSE (DKT. # 109)**

13         In their response to the Court's Order to Show Cause, plaintiffs argue that the Rooker-  
 14 Feldman doctrine does not apply to their claims because they are not asserting legal error by  
 15 Idaho or Washington courts, but rather "an affirmative independent legal wrong" by the Bank.  
 16 Dkt. # 109 at 2–3. "Rooker–Feldman prohibits a federal district court from exercising subject  
 17 matter jurisdiction over a suit that is a de facto appeal from a state court judgment." Kougasian  
 18 v. TMSL, Inc., 359 F.3d 1136, 1139 (9th Cir. 2004). Courts should construe a claim as a de  
 19 facto appeal only when a plaintiff seeks "relief from the state court judgment" and "asserts as  
 20 [plaintiff's] injury legal error or errors by the state court." Id. at 1140. "A plaintiff alleging  
 21 extrinsic fraud on a state court is not alleging a legal error by the state court; rather, he or she is  
 22 alleging a wrongful act by the adverse party." Id. at 1140–41.

23         Here, plaintiffs argue that the Court should not construe their claims as a de facto appeal  
 24 from the Idaho Default Judgment. See Dkt. # 109 (e.g., "Here, this Court is not being called  
 25 upon to directly remedy an erroneous decision by the Idaho State Court that entered the Idaho  
 26

1 Default Judgment," "This is not a direct appeal of the Idaho Default Judgment," and "Plaintiffs  
2 are not requesting this Court review the Idaho Default Judgment"). However, plaintiffs pled  
3 claims based on the alleged unlawfulness of the writ of execution issued by the King County  
4 Superior Court in 2018 ("the King County writ"), not based on alleged extrinsic fraud used in  
5 procuring the Idaho Default Judgment. Thus, plaintiffs' focus on the Idaho Default Judgment is  
6 misplaced.

7 Plaintiffs contend that the Court is being asked to determine the following:

8 (A) whether the non-governmental Defendants committed extrinsic fraud when  
9 they lied to the Idaho State Court by stating that after using due diligence they  
10 could not locate Plaintiff Henry Dean and served him by publication thereby  
depriving him of meaningful notice and opportunity to be heard; and (B) whether  
11 the non-governmental Defendants knowingly and unlawfully utilized a  
Washington state court procedure and this State's law enforcement agencies to  
12 unlawfully search Defendants Henry Dean's and Ginger Atherton's residence and  
seize their personal property.  
13

14 Dkt. # 109 at 2. First, with respect to the alleged fraud upon the Idaho State Court, nowhere in  
15 the causes of action set forward in the complaint do plaintiffs base their claims on such fraud.  
16 While the complaint refers to the Bank as having "misrepresented facts in its motion seeking  
17 service by publication" before the Idaho court, Am. Comp. ¶ 3.3, plaintiffs acknowledged the  
18 Bank's position could be construed as being "calculated not to provide notice" or, more  
19 charitably, as a lack of diligence. Am. Compl. ¶ 3.21. Plaintiffs' allegations in the complaint  
20 regarding the wrongfulness of the Bank's actions center not on the Idaho Default Judgment  
21 being invalid due to fraud, but rather on the Bank using the Idaho Default Judgment after it  
22 allegedly expired. See Am. Compl. ¶ 4.23 ("The Bank acted under color of state law by utilizing  
23 a 2010 Idaho Default Judgment on which rights of execution had long ago expired against  
24 personal property to wrongfully and unlawfully obtain the aid and power of the King County  
25 Superior Court and King County Sheriff . . . ."), ¶ 5.15 ("Thus, while the Idaho Default  
26

27 ORDER REGARDING PLAINTIFFS' RESPONSE TO ORDER  
28 TO SHOW CAUSE AND PLAINTIFFS' MOTION TO  
DISMISS DEFENDANT'S COUNTERCLAIMS - 4

1 Judgment expired as to personal property, the Bank has been able to execute on and deprive  
 2 Plaintiffs of their personal property by utilizing and receiving assistance from the machinery of  
 3 the State of Washington . . .”), ¶ 8.2 (“Plaintiffs seek declaratory judgment by the Court that  
 4 the right of execution has long since expired under the Idaho Default Judgment as of January of  
 5 2015 and the Bank has improperly seized property belonging to Plaintiffs in unlawful reliance  
 6 on the expired judgment.”).

7 With respect to the King County writ, plaintiffs assert that the Bank “utilized the  
 8 Washington garnishment statute to obtain a writ of [execution], served instructions to levy on  
 9 the King County Sheriff, and unlawfully seized the [plaintiffs’<sup>1</sup>] property under color of state  
 10 law,” and it was the Bank’s actions, not the “state court’s erroneous decisions” that caused  
 11 plaintiffs’ damages. Dkt. # 109 at 3. Plaintiffs state that they are requesting that the Court  
 12 “construe Washington law to not allow a judgment creditor to obtain greater collection rights  
 13 just because the creditor registered its judgment in Washington.” Dkt. # 109 at 5. Ultimately,  
 14 success on plaintiffs’ claims—with one partial exception<sup>2</sup>—would require the Court to reject the  
 15 validity of the King County writ, and not on the basis of fraud upon the court. Plaintiffs’  
 16 complaint effectively asserts legal error by the King County Superior Court in that it indicates  
 17 that the King County Superior Court was legally wrong to issue the writ of execution because,  
 18 according to plaintiffs’ contested interpretation of the law, the Idaho Default Judgment had  
 19 already expired. Am. Compl. ¶ 5.14 (referring to the “Idaho Default Judgment [as having] long  
 20

---

21       <sup>1</sup> Plaintiffs referred to the unlawful seizure of “Defendants’” property and to a writ of  
 22 “garnishment,” Dkt. # 109 at 3, but the Court presumes these were errors.

23       <sup>2</sup> As stated above, the only cause of action the Court previously construed as permitted under the  
Rooker-Feldman doctrine was plaintiffs’ Section 1983 claim under the Fourth Amendment, and only to  
 24 the extent the claim “pertains to defendant’s alleged conduct during the entrance and searching of  
 25 plaintiffs’ residence,” in “enforcing the writ of execution.” Dkt. # 107 at 4.

1 expired as to writs of execution”), ¶ 8.2 (seeking declaration that “the right of execution has  
 2 long since expired under the Idaho Default Judgment” and that the Bank “improperly seized  
 3 property belonging to Plaintiffs in unlawful reliance on the expired judgment”); see also Dkt.  
 4 # 33 (plaintiffs’ motion for summary judgment). Plaintiffs have failed to explain how their  
 5 claims can succeed without asking this Court to determine whether the King County Superior  
 6 Court validly issued the 2018 writ of execution,<sup>3</sup> an inquiry this Court cannot undertake for the  
 7 reasons explained in-depth in the Court’s Order to Show Cause. See generally Dkt. # 107; see  
 8 also Ezor v. McDonnell, No. CV 19-8851-JVS (AGR), 2020 WL 6468448, at \*5 (C.D. Cal. Oct.  
 9 21, 2020), report and recommendation adopted, No. CV 19-8851-JVS (AGR), 2020 WL  
 10 7479622 (C.D. Cal. Dec. 18, 2020) (concluding that plaintiff failed to sufficiently allege  
 11 extrinsic fraud by defendants, and holding that “to the extent Plaintiff contests the validity of the  
 12 judgment in the probate case and of the writ of execution and related orders issued by the  
 13 Superior Court, Rooker-Feldman bars subject-matter jurisdiction over his claims”); Muhammad  
 14 v. Reese L. Grp., No. 16CV2513-MMA (BGS), 2017 WL 4557194, at \*5 (S.D. Cal. Oct. 12,  
 15 2017) (concluding that Rooker-Feldman barred the district court from reviewing a challenge  
 16 based on a state writ of execution where adjudicating the claim would undercut that state court  
 17 judgment).

18       Although plaintiffs may retain their first cause of action to the extent it pertains to the  
 19 Bank’s alleged conduct in enforcing the writ of execution during the entrance and search of  
 20 plaintiffs’ residence, the remainder of plaintiffs’ claims must be DISMISSED for lack of subject  
 21 matter jurisdiction.

22

---

23       <sup>3</sup> Notably, the Bank is pursuing an action on its judgment in Idaho, and the Idaho state court  
 24 recently summarized the instant action in this District as “a federal challenge of a state court action.”  
 25 Dkt. # 148-1 at 10. Plaintiffs request that the Court defer any Rooker-Feldman doctrine ruling until two  
 26 motions for summary judgment in the Idaho state court litigation are decided, Dkt. # 147 at 1, but  
 27 deferring this ruling makes little sense when that litigation would not address the King County writ.

1           **III. PLAINTIFFS' MOTION TO DISMISS DEFENDANT'S COUNTERCLAIMS**  
 2           **(DKT. # 132)**

3           Plaintiffs moved to dismiss the Bank's fraudulent transfer counterclaims for lack of  
 4 subject-matter jurisdiction.<sup>4</sup> The Bank contends that the Court has diversity jurisdiction over the  
 5 counterclaims, and even if it did not, that supplemental jurisdiction would apply.

6           **A. Diversity Jurisdiction**

7           With respect to diversity jurisdiction, plaintiffs argue that there is no diversity because an  
 8 entity known as Karma Power, LLC ("Karma")—a non-diverse entity<sup>5</sup>—is "either the real party  
 9 in interest or a partner or joint venturer with the Bank to collect the Judgment and share in the  
 10 collection expenses." Dkt. # 132 at 6. The Bank responds that the citizenship of non-parties like  
 11 Karma is irrelevant,<sup>6</sup> and the Bank contends that it is a real party in interest because it "holds the

---

13           <sup>4</sup> The Bank makes eight counterclaims in its amended answer. Dkt. # 18 ¶¶ 30–82 (declaratory  
 14 judgment (claims one and two), fraudulent transfers (claims three through seven), and injunction to  
 15 prevent further fraudulent transfers (claim eight)). Plaintiffs' motion to dismiss appears to target only the  
 16 fraudulent transfer counterclaims. See, e.g., Dkt. # 132 at 1–2 (referring to the claims dealing with  
 17 "fraudulently transfer[ring] shares"), 6 (referring to the Bank's "Fraudulent Transfer Claims"), 8  
 18 (referring to the Bank's "fraudulent transfer claims").

19           <sup>5</sup> The Bank filed a Supplemental Corporate Disclosure Statement providing that Karma "had an  
 20 interest in [the judgment against Henry W. Dean] at certain times." Dkt. # 90. The statement also  
 21 identified Karma's members. Id. The Bank concedes that at least one member of Karma resides in  
 22 Washington (Mark Calvert). Dkt. # 137 at 9. The Bank is a citizen of Idaho. Am. Compl. ¶ 1.4. Plaintiffs  
 23 and counterclaim defendants are citizens of Washington. Am Compl. ¶¶ 1.1–1.3; Dkt. # 18 at 11, ¶¶ 3–4.

24           <sup>6</sup> The Bank, in support of this argument, mischaracterizes the Court's prior statement related to  
 25 this issue. Plaintiffs previously filed a "Motion to Dismiss Added Parties for Failure to Serve," Dkt.  
 26 # 27, and they filed a reply in support of that motion claiming that there were "issues related to diversity  
 27 jurisdiction." Dkt. # 64 at 6. The Court observed that plaintiffs' reply "belatedly and vaguely  
 28 stated . . . that there is no subject matter jurisdiction over the Bank's state law fraudulent transfer claims  
 because there is no diversity jurisdiction." Dkt. # 71 at 5 n.3. The Court noted that plaintiffs' arguments  
 pertained to Mark Calvert and Karma and that the Bank did not seek to add either to the action. Id. The  
 Court concluded that any "issues that plaintiffs have with the Bank's corporate disclosure are not  
 relevant to these motions," referring to the motions the Court was considering in its Order, i.e.,  
 plaintiffs' "Motion to Strike Pleading" and "Motion to Dismiss Added Parties for Failure to Serve," and

1 legal authority to prosecute all claims related to the Judgment,” it has a financial interest in the  
 2 outcome of the litigation, and it has spent “the *last decade* trying to enforce its judgment against  
 3 Dean.” Dkt. # 137 at 10–11. The Bank relies primarily on Lincoln Prop. Co. v. Roche, 546 U.S.  
 4 81 (2005), which provides that “if [a] named party’s interest is real, the fact that other interested  
 5 parties are not joined ‘will not affect the jurisdiction of the [federal courts].’” Id. at 93 (quoting  
 6 Little v. Giles, 118 U.S. 596, 603 (1886)).

7 Jurisdiction must rely upon the citizenship of “real and substantial parties to the  
 8 controversy.” Navarro Sav. Ass’n v. Lee, 446 U.S. 458, 461 (1980). “The general rule is that the  
 9 citizenship of the real party in interest is determinative in deciding whether diversity jurisdiction  
 10 exists” and “the presence of a nominal or formal party who is nondiverse is irrelevant for  
 11 purposes of measuring the court’s subject-matter jurisdiction.” Charles A. Wright, Arthur R.  
 12 Miller, & Mary Kay Kane, 6A Federal Practice and Procedure § 1556 (3d ed., April 2021  
 13 Update). The Court must look to Washington law to determine whether the Bank may proceed  
 14 as a real party in interest on its fraudulent transfer counterclaims. Allstate Ins. Co. v. Hughes,  
 15 358 F.3d 1089, 1094 (9th Cir. 2004). Pursuant to Washington law, “[t]he real party in interest is  
 16 the person who possesses the right sought to be enforced.” Peyton Bldg., LLC v. Niko’s  
 17 Gourmet, Inc., 180 Wn. App. 674, 680 (2014).

18 At the time the initial complaint was filed, on September 24, 2018, Dkt. # 1, the Bank  
 19 appears to have “assign[ed] all of its interest” in the Judgment to Karma via a “Judgment Sale,  
 20 Purchase and Assignment Agreement” (“Assignment Agreement”). See # 133-1 (reflecting that  
 21

---

22 the Bank’s “Motion for Relief from Deadline for Joining Additional Parties.” Id. The Bank offers the  
 23 following inaccurate summary of the Court’s conclusion: “But as this Court already stated the last time  
 24 Plaintiffs raised this issue, the citizenship of non-parties, specifically including Karma, is irrelevant to  
 25 the diversity jurisdiction analysis. See Dkt. # 71 at 5, n.3.” Dkt. # 137 at 10. As the text of the relevant  
 26 footnote and context demonstrate, however, the Court stated no such thing. Moreover, a fleshed-out  
 27 diversity jurisdiction argument was not before the Court at the time.

28 ORDER REGARDING PLAINTIFFS’ RESPONSE TO ORDER  
 TO SHOW CAUSE AND PLAINTIFFS’ MOTION TO  
 DISMISS DEFENDANT’S COUNTERCLAIMS - 8

1 the Assignment Agreement was entered into on May 23, 2017, but Mark Calvert's signature is  
 2 missing from the document plaintiffs submitted). The Bank later entered into an Amendment to  
 3 the Assignment Agreement with Karma on December 17, 2018, and this transferred ownership  
 4 of the Judgment back to the Bank. Dkt. # 133-2 ("Karma re-assigns to the Bank Karma's  
 5 ownership of the Judgment."). Ten days after this Amendment to the Assignment Agreement,  
 6 the Bank filed an amended answer alleging fraudulent transfer counterclaims against plaintiffs  
 7 and three additional parties: WN3, James Dean, and Frank Dean. Dkt. # 18.

8 Plaintiffs have two arguments regarding diversity jurisdiction over the Bank's  
 9 counterclaims, though these arguments failed to fully materialize until plaintiffs' reply. Compare  
 10 Dkt. # 132 with Dkt. # 138. The first argument applies to the Bank's fraudulent transfer  
 11 counterclaims against plaintiffs, for which plaintiffs contend diversity jurisdiction does not lie  
 12 because Karma was the real party in interest at the time plaintiffs filed their complaint. Dkt.  
 13 # 138 at 8–10. The second argument applies to the Bank's fraudulent transfer counterclaims  
 14 against the additional counterclaim defendants (WN3, James Dean, and Frank Dean),<sup>7</sup> for which  
 15 plaintiffs assert that diversity jurisdiction does not lie because the Amendment to the  
 16 Assignment Agreement was collusive.<sup>8</sup> Dkt. # 138 at 10–14.

17 As pertains to the Bank's fraudulent transfer counterclaims against plaintiffs, the Court is  
 18 not persuaded by plaintiffs' argument that relies exclusively on the principle that diversity be  
 19

---

20       <sup>7</sup> While plaintiffs refer to the Bank's fraudulent transfer claims against WN3, James Dean, and  
 21 Frank Dean as "Third-Party Claims," the Court has recognized these as counterclaims against  
 22 counterclaim parties. Dkt. # 71 at 2 n.1.

23       <sup>8</sup> Plaintiffs acknowledge that "[w]hen a party files an amended pleading that joins new parties,  
 24 the diversity between the party bringing the claim and the parties named as defendants as to the claim  
 25 must exist at the time of the amendment," which indicates that there is diversity subject matter  
 26 jurisdiction over the Bank's claims against WN3, James Dean, and Frank Dean, absent the Amendment  
 27 to the Assignment Agreement being determined invalid. Dkt. # 138 at 11 (citing Lewis v. Lewis, 358  
 28 F.2d 495, 402 (9th Cir. 1966)).

1 determined at the time the complaint is filed. Dkt. # 138 at 9. Plaintiffs cite a case applying this  
2 principle to counterclaims filed subsequent to a complaint, Dkt. # 138 at 8, but the case they rely  
3 upon did not involve the “real party in interest” standard or assignment of claims. See Grail  
4 Semiconductor, Inc. v. Stern, No. CV-1303687 SJO (AGRx), 2014 WL 12594162 (C.D. Cal.  
5 Mar. 3, 2014). And a change in claim assignment can affect the status of the real party in  
6 interest, even when the change does not occur until *after* the complaint has been filed. See Winn  
7 v. Amerititle, Inc., 731 F. Supp. 2d 1093, 1099 (D. Idaho 2010) (permitting assignment of claim  
8 to plaintiff who was not the real party in interest at the time he filed suit where the assignment  
9 did not prejudice the defendant, and even before the assignment, plaintiff had a strong \$100,000  
10 monetary interest in the claim, and his involvement in the transaction provided him with  
11 considerable interest in the claim); Charles A. Wright, Arthur R. Miller, & Mary Kay Kane, 6A  
12 Federal Practice and Procedure § 1545 (3d ed., April 2021 Update) (“There is no general  
13 requirement as to when an assignment must be made and it has been held that even when the  
14 claim is not assigned until after the action has been instituted, the assignee is the real party in  
15 interest and can maintain the action.”); 4 Moore’s Federal Practice – Civil § 17.10 (2021)  
16 (“[T]he circumstances on the date of filing do not control a determination of whether a person or  
17 entity is the real party in interest.”). Here, even at the time the complaint was filed, the Bank had  
18 an interest in 50% of the first \$750,000.00 in net proceeds recovered through collection efforts  
19 on the Judgment, Dkt. # 133-1 at 3, and the Bank’s historical involvement in trying to enforce  
20 the Judgment against plaintiffs provided it with a legitimate interest in the claim. And when the  
21 Bank actually filed its counterclaims in its Amended Answer, it owned the Judgment. Thus, per  
22 the Amendment to the Assignment Agreement, the Bank appears to be the real party in interest  
23 for purposes of the fraudulent transfer counterclaims against plaintiffs and counterclaim

24

25

26

27 ORDER REGARDING PLAINTIFFS’ RESPONSE TO ORDER  
28 TO SHOW CAUSE AND PLAINTIFFS’ MOTION TO  
DISMISS DEFENDANT’S COUNTERCLAIMS - 10

1 defendants. If, however, the Amendment to the Assignment Agreement was improper or  
 2 collusive, the Bank's status as the real party in interest would be in jeopardy.

3       “When the issue of a collusive assignment is raised, the party asserting diversity has the  
 4 burden of showing the non-collusive nature of the assignment.” W. Farm Credit Bank v.  
 5 Hamakua Sugar Co., 841 F. Supp. 976, 981 (D. Haw. 1994) (citing Dweck v. Japan CBM Corp.,  
 6 877 F.2d 790, 792 (9th Cir. 1989)). Because plaintiffs did not directly raise the issue of the  
 7 alleged collusive nature of the assignment amendment until their reply brief, however, the Bank  
 8 has not had sufficient opportunity to respond to this issue. The Court ultimately concludes that  
 9 supplemental jurisdiction exists over the fraudulent transfer counterclaims, for the reasons  
 10 discussed in the following section, and thus the Court need not further address the alleged  
 11 collusive nature of the Amendment to the Assignment Agreement.

12 **B. Supplemental Jurisdiction**

13       Even when a federal court does not have independent jurisdiction to consider a  
 14 counterclaim, it may nonetheless have jurisdiction over the matter pursuant to 28 U.S.C. § 1337.  
 15 “[I]n any civil action of which the district courts have original jurisdiction, the district courts  
 16 shall have supplemental jurisdiction over all other claims that are so related to claims in the  
 17 action within such original jurisdiction that they form part of the same case or controversy.” 28  
 18 U.S.C. § 1337(a). “A state law claim is part of the same case or controversy when it shares a  
 19 ‘common nucleus of operative fact’ with the federal claims and the state and federal claims  
 20 would normally be tried together.” Bahrampour v. Lampert, 356 F.3d 969, 978 (9th Cir. 2004)  
 21 (quoting Trs. of the Constr. Indus. & Laborers Health & Welfare Tr. v. Desert Valley Landscape  
 22 Maint., Inc., 333 F.3d 923, 925 (9th Cir. 2003)).

23       Plaintiffs argue that the Bank’s fraudulent transfer claims have a different common  
 24 nucleus of operative fact from plaintiffs’ Section 1983 claims. Plaintiffs characterize the  
 25 Section 1983 claim as involving the following operative facts: the Bank obtained a Washington  
 26

1 Writ of Execution in 2018, the Bank utilized the Sheriff to force entry into the judgment  
 2 debtors' and non-judgment debtor's home, where the Bank seized jointly owned property, and it  
 3 also seized jointly owned stock held by non-judgment debtor plaintiff BGH. Dkt. # 132 at 8.  
 4 Plaintiffs characterize the Bank's fraudulent transfer counterclaims, on the other hand, as  
 5 involving facts that plaintiffs transferred the judgment debtor's property prior to the 2018  
 6 seizure. Id. The Bank frames the facts as sharing a common nucleus of operative fact "in that  
 7 both claims are related to Dean's debt and the Bank's judgment against Dean." Dkt. # 137 at 13.  
 8 The Bank also cites cases in this circuit concluding that supplemental jurisdiction applies when a  
 9 defendant's counterclaims "bear a logical and factual relationship to [the plaintiff's] claims in  
 10 that they are related to a single debt incurred by [the plaintiff]." Id. (quoting Sparrow v. Mazda  
 11 Am. Credit, 385 F. Supp. 2d 1063, 1070 (E.D. Cal. 2005); citing Wilson v. Discover Bank, No.  
 12 3:12-CV-05209-RBL, 2012 WL 1899539, at \*3 (W.D. Wash. May 24, 2012); Cousens v. Am.  
 13 Honda Fin. Corp., No. 06-CV-2080 W (LSP), 2007 WL 9776765, at \*2 (S.D. Cal. Feb. 5, 2007);  
 14 In re Pinkstaff, 974 F.2d 113, 115-16 (9th Cir. 1992)). The Court agrees with the Bank.  
 15 Although the fraudulent transfer counterclaims will involve additional facts regarding plaintiffs'  
 16 alleged attempts to evade collection on the Judgment debt, they are logically connected to the  
 17 Bank's actions undertaken to try and collect on that debt in 2018.

18 A court may nevertheless decline to exercise supplemental jurisdiction over state law  
 19 claims under any of the following four circumstances:

- 20       (1) the claim raises a novel or complex issue of State law,
- 21       (2) the claim substantially predominates over the claim or claims over which the district  
      court has original jurisdiction,
- 22       (3) the district court has dismissed all claims over which it has original jurisdiction, or
- 23       (4) in exceptional circumstances, there are other compelling reasons for declining  
      jurisdiction.

24  
 25 28 U.S.C. § 1367(c). "While discretion to decline to exercise supplemental jurisdiction over  
 26 state law claims is triggered by the presence of one of the conditions in § 1367(c), it is informed

27 ORDER REGARDING PLAINTIFFS' RESPONSE TO ORDER  
 28 TO SHOW CAUSE AND PLAINTIFFS' MOTION TO  
   DISMISS DEFENDANT'S COUNTERCLAIMS - 12

1 by the Gibbs values ‘of economy, convenience, fairness, and comity.’” Acri v. Varian Assocs., Inc., 114 F.3d 999, 1001 (9th Cir.), supplemented, 121 F.3d 714 (9th Cir. 1997), as amended (Oct. 1, 1997). The only applicable condition plaintiffs raise is § 1367(c)(4),<sup>9</sup> and they contend that “strong policy reasons . . . favor declining to exercise jurisdiction,” citing a case involving the Fair Debt Collection Practices Act (“FDCPA”): Sparrow, 385 F. Supp.2d at 1071. Sparrow held that “to allow a debt collector defendant to seek to collect the debt in the federal action to enforce the FDCPA might well have a chilling effect” whereby potential plaintiffs are deterred from pursuing their rights under the FDCPA. Id. at 1071 (quoting Leatherwood v. Universal Bus. Serv. Co., 115 F.R.D. 48, 49 (W.D.N.Y. 1987)). Plaintiffs argue that their rights to be free from unlawful search and seizure would be similarly chilled by permitting the fraudulent transfer counterclaims to go forward in this action. Dkt. # 138 at 15–16. Where a creditor is bringing a counterclaim not for an alleged debt, but rather to enforce a previously obtained judgement, however, the concern about creating a forum for a “defendant to obtain a judgment on the debt is inapplicable.” Brown v. Mandarich L. Grp., LLP, No. 13-CV-04703-JSC, 2014 WL 2860631, at \*2 (N.D. Cal. June 23, 2014). Here, a judgment on plaintiff Henry Dean’s debt already exists, and the Bank alleges that Dean has been evading collection. While plaintiffs

---

<sup>9</sup> The Bank’s counterclaims do not present novel or complex issues of State law, 28 U.S.C. § 1367(c)(1), and the Court is not dismissing all claims over which it has original jurisdiction, 28 U.S.C. § 1367(c)(3). Additionally, the Court finds that the Bank’s counterclaims do not substantially predominate over plaintiffs’ remaining Section 1983 claim. 28 U.S.C. § 1367(c)(2). At oral argument, the Bank’s counsel cited the following factual allegations in plaintiffs’ complaint that directly relate to the Bank’s fraudulent transfer counterclaims: ¶ 3.39 (regarding use of the King County Sheriff to attach and seize intangible property not belonging to Henry Dean, but belonging to BGH Holdings and Ms. Atherton), ¶¶ 3.61–3.77 (regarding use of the King County Sheriff to seize HTP stock owned by BGH Holdings, as well as Ms. Atherton and Mr. Dean’s options to purchase stock in HTP). The Bank has raised fraudulent transfer as an affirmative defense to plaintiffs’ Section 1983 claim. Dkt. # 18 at 10–11, ¶¶ 6–7. Given that the Bank’s fraudulent transfer counterclaims are based on the same facts as its affirmative defense are, the counterclaims will not so substantially predominate as to justify the judicial inefficiency that would result if this Court were to decline to exercise supplemental jurisdiction. See, e.g., Competitive Techs. v. Fujitsu Ltd., 286 F. Supp. 2d 1118, 1143 (N.D. Cal. 2003).

1 allege that their property was unlawfully seized, if certain transfers of property were fraudulent,  
2 as the Bank alleges, this could affect the success of plaintiffs' claim accordingly. It would  
3 promote the values of judicial economy and convenience to exercise jurisdiction over the Bank's  
4 counterclaims, and it would relieve the Bank from filing a new claim in state court after the  
5 motions practice the parties have already pursued in this action. See, e.g., Dkts. # 27, # 31, # 33,  
6 # 118, # 121. The Court concludes that it has supplemental jurisdiction over the Bank's  
7 fraudulent transfer counterclaims. Accordingly, plaintiffs' motion to dismiss the Bank's  
8 counterclaims for lack of subject matter jurisdiction (Dkt. # 132) is DENIED.

9 **IV. CONCLUSION**

10 For all the foregoing reasons, IT IS HEREBY ORDERED THAT:

11 (1) Plaintiffs may proceed on their Section 1983 claim under the Fourth Amendment  
12 insofar as it pertains to defendant's alleged conduct during the entrance and search of plaintiffs'  
13 residence. All other causes of action alleged by plaintiffs are DISMISSED without prejudice  
14 for lack of jurisdiction.

15 (2) Plaintiffs' motion to dismiss defendant's counterclaims for lack of subject matter  
16 jurisdiction (Dkt. # 132) is DENIED.

17 IT IS SO ORDERED.

18  
19 DATED this 27th day of September, 2021.

20  
21 

22 Robert S. Lasnik  
23 United States District Judge